

1
2 Jeannie Cervera
3 Assistant Regional Counsel
4 United States Environmental Protection Agency
5 75 Hawthorne Street
6 San Francisco, California 94105

7 Attorney for EPA

8 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 IN THE MATTER OF:

11 Del Amo Plant Site

12 Shell Oil Company
13 The Dow Chemical Company

14 RESPONDENTS

15 Proceeding Under Sections 104, 122(a) and
16 122(d)(3) of the Comprehensive Environmental
17 Response, Compensation and Liability Act of 1980
(42 U.S.C. §§ 9604, 9622(a), 9622(d)(3) as
amended by the Superfund Amendments and
Reauthorization Act of 1986.

U.S. EPA Docket No. 92-13

18
19 ADMINISTRATIVE ORDER ON CONSENT
20 FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY
21 AND FOCUSED FEASIBILITY STUDY
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	Introduction	1
II.	Jurisdiction	2
III.	Parties Bound	2
IV.	Statement of Purpose	2
V.	Findings of Fact	3
VI.	Conclusions of Law	9
VII.	Determinations	9
VIII.	Lead Agency Notice	9
IX.	Work to Be Performed	9
X.	EPA'S Baseline Risk Assessment	12
XI.	Modification of the Work Plan	13
XII.	Quality Assurance	15
XIII.	Final RI/FS, Focused FS, Proposed Plan, Public Comment, Record of Decision, Administrative Record	15
XIV.	Progress Reports and Meetings	16
XV.	Site Access	16
XVI.	Sampling, Access, and Data/Document Availability	17
XVII.	Designated Project Coordinators	19
XVIII.	Other Applicable Laws	21
XIX.	Record Preservation	21
XX.	Dispute Resolution	22
XXI.	Stipulated Penalties	24
XXII.	Force Majeure	27
XXIII.	Reimbursement of Past Costs	28
XXIV.	Reimbursement of Response and Oversight Costs	30
XXV.	Reservations of Rights and Reimbursement of Other Costs	33
XXVI.	Other Claims	34

1	XXVII. Indemnification	35
2	XXVIII. Effective Date and Subsequent Modification	35
3	XXIX. Contribution	35
4	XXX. Termination and Satisfaction	36
5	XXXI. Disclaimer	36
6	XXXII. Counterparts	37
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 I. INTRODUCTION

2 A. This Administrative Order on Consent (Consent Order) is entered into
3 voluntarily by the United States Environmental Protection Agency (EPA), the California
4 Department of Toxic Substances Control ("DTSC"), and the Respondents (Shell Oil
5 Company and the Dow Chemical Company). The Consent Order concerns the preparation
6 of, performance of, and reimbursement for costs incurred by EPA and DTSC in connection
7 with a remedial investigation and feasibility study (RI/FS) for the Del Amo Facility Site
8 located in Los Angeles, California, as well as reimbursement of past response costs.

9 II. JURISDICTION

10 A. This Consent Order is issued under the authority vested in the President of
11 the United States by Sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmen-
12 tal Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9622(a),
13 9622(d)(3) (CERCLA). This authority was delegated to the Administrator of EPA on
14 January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (1987), and further
15 delegated to Regional Administrators on September 13, 1987, by EPA Delegation Nos. 14-8-
16 A and 14-14-C. This authority has been redelegated by the Regional Administrator to the
17 Director, Hazardous Waste Management Division, U.S. EPA, Region 9. DTSC is the
18 successor in interest to the Toxic Substances Control Program of the California Department
19 of Health Services. DTSC has jurisdiction over the matters set forth herein pursuant to
20 California Health & Safety Code § 25300 et seq. and § 121(f) of CERCLA, 42 U.S.C.
21 §9621(f).

22 B. The Respondents agree to undertake all actions required by the terms and
23 conditions of this Consent Order. In any action by EPA or the United States to enforce the
24 terms of this Consent Order, Respondents consent to and agree not to contest the authority
25 or jurisdiction of the Regional Administrator to issue or enforce this Consent Order, and
26 agree not to contest the validity of this Consent Order.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

B. The Respondents shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. Respondents shall provide a copy of this Consent Order to all contractors and subcontractors ("contractors") that are retained to conduct any work performed under this Consent Order, within 14 days after the effective date of this Consent Order or the date of retaining their services, whichever is later. Respondents shall require that any work being performed by any contractors or subcontractors pursuant to this Consent Order be performed in a manner consistent with the terms of the Consent Order.

In entering into this Consent Order, the mutual objectives of EPA, DTSC, and Respondents are:

1 also includes a list of reports, documents, and other deliverables that the Respondents will
2 provide for EPA review, comment and/or approval.

3 B. To conduct the Feasibility Study ("FS") for the Del Amo Plant Site, as
4 described in the SOW, which evaluates remedial action alternatives to prevent and eliminate
5 the release or threatened release of hazardous substances, pollutants, or contaminants at or
6 from the Del Amo Plant Site.

7 C. To conduct a Focused Feasibility Study for the 3.7-acre Del Amo pit site, as
8 described in the SOW, which evaluates remedial action alternatives to prevent and eliminate
9 the release or threatened release of hazardous substances, pollutants, or contaminants at or
10 from the 3.7-acre Del Amo pit site, as defined in Section V below.

11 D. To undertake all actions required by the terms and conditions of this Consent
12 Order in accordance with the provisions of CERCLA and the National Contingency Plan
13 ("NCP"), 40 C.F.R. Part 300 et seq., as amended. Activities conducted in compliance with
14 this Consent Order shall be deemed in compliance with the NCP.

15 E. This Consent Order does not require Respondents to implement the remedial alternative
16 chosen by EPA, in the Record Of Decision ("ROD"), for the site.

17 V. FINDINGS OF FACT

18 A. On July 29, 1991, EPA proposed the Del Amo Superfund Site for the National
19 Priorities List ("NPL") (56 Fed. Reg. No. 145), as defined by CERCLA (42 U.S.C §9605).
20 EPA policy prescribes that the "listing process is not intended to define or reflect boundaries
21 of such facilities or releases" (56 Fed. Reg. 35843). Accordingly, the proposed listing did
22 not include any precise geographical boundaries for the Del Amo Plant Site. The extent of
23 the Del Amo Plant Site will be refined as more information is developed during the RI/FS
24 and during implementation of the remedy.

25 B. The Del Amo Remedial Investigation/Feasibility Study ("RI/FS") area shall
26 include, at a minimum, the approximately 278 acres which comprised a former synthetic
27 rubber manufacturing facility which generally occupied an area between 190th Ave. on the
28 North, Vermont Ave. on the East, Knox Street on the North, Hamilton Ave. on the East,

1 and Del Amo Blvd. on the South. The western boundary of the facility is approximately
2 500 feet east of Normandie Ave. (see Figure 1). This approximately 278 acre area is
3 referred to herein as the "Plant Site". Collectively, the RI/FS area or the Plant Site shall
4 be referred to as the "Plant Site RI/FS area". The fact that a particular location is the
5 subject of the Plant Site RI/FS does not mean that a release or threatened release has
6 occurred on that portion of the Plant Site.

7 C. The "Del Amo Pit Site" is approximately 3.7 acres in size and is contained
8 within Lot 36 of the Plant Site RI/FS area (Los Angeles County Assessors Map #7531-34
9 Northwest). It is identical to the Del Amo Site which was the subject of a Consent Order
10 entered into between the State of California Department of Health Services, GP Holdings
11 Inc., The Dow Chemical Company and Shell Oil Company dated March 18, 1988 and to the
12 site which is the subject of litigation encaptioned Cadillac Fairview/California, Inc. v. The
13 Dow Chemical Co. et al., United States District Court, Central District of California, Docket
14 No. 83-7996.

15 D. The NCP defines "on-site" as the areal extent of contamination and all suitable
16 areas in close proximity to the contamination necessary for implementation of the response
17 action (NCP §300.400(e)(1)). As a result, the site boundaries may change during the RI/FS
18 process, as the areal extent of contamination is better defined.

19 E. In 1942, the Defense Plant Corporation (DPC), which was created under the
20 authority of the Reconstruction Finance Corporation (RFC), acquired title to a parcel of
21 undeveloped land for the construction of three related plants which would comprise the
22 synthetic rubber manufacturing facility. The RFC had been authorized to create a
23 corporation to produce synthetic rubber for the United States by the RFC Act, as amended
24 on June 25, 1940. The authority to own, operate, administer, and inspect the operations of
25 the Government-owned facilities was re-authorized to the RFC in 1942 under the Second
26 War Powers Act of 1942. The three related plants, which were constructed in 1942,
27 consisted of a butadiene plant, a styrene plant, and a copolymer plant where butadiene and
28 styrene were mixed to produce synthetic rubber.

1 F. From 1942 to 1955, the three plants were owned by the U.S. Government and
2 operated under Agreements to Lease by the following companies:

3 - From 1942 to 1955, Shell Chemical Corporation (Shell) operated the
4 butadiene plant;

5 - From 1942 to 1955, The Dow Chemical Company (Dow) operated the styrene
6 plant;

7 - From 1942 to 1949, Goodyear Tire Company of California, and its subsidiary
8 Goodyear Synthetic Rubber Corporation, operated a portion of the copolymer plant;

9 - From 1950 to 1955, Midland Rubber Company (Midland) a subsidiary of
10 Minnesota Mining & Manufacturing Company, operated the copolymer plant.

11 G. In 1954, the Federal Facilities Corporation (FFC) replaced the Reconstruction
12 Finance Corporation in the oversight of the Government's synthetic rubber facilities. In
13 1955, the U.S. Government sold the synthetic rubber facility to Shell Chemical Corporation.
14 This sale occurred under the Rubber Producing Facilities Act of 1953, through the Rubber
15 Producing Facilities Disposal Commission. The General Services Administration (GSA) is
16 the successor in interest to the RFC, DPC, FFC, and the Rubber Producing Facilities
17 Disposal Commission.

18 H. Shell operated the synthetic rubber manufacturing facility from 1955 through
19 about 1969 at which time rubber manufacturing activities at the facility ceased.

20 I. During the period in which the Site was used for the production of synthetic
21 rubber (1942 through 1969), operations were conducted in a relatively consistent manner.
22 Raw materials were received via surface transport and underground pipelines, with above
23 and underground tanks being used for the storage of raw materials and finished products.
24 Each plant was equipped with its own wastewater disposal system, which included the use
25 of unlined surface impoundments. Other waste disposal impoundments included three
26 evaporation ponds (referred to as Pits 1A-C) and six sumps (referred to as Pits 2A-F)(see
27 Figure 1).
28

1 J. In 1972, Shell sold the entire facility to Cabot, Cabot & Forbes (CC&F), a
2 land development company. CC&F began the dismantling of the facility and the
3 commercial development of the property, including the sale of portions of the former
4 facility. In March of 1976, CC&F entered into a partnership with Cadillac Fairview/Califor-
5 nia, Inc. (Cadillac Fairview) for the continued commercial development of the remainder
6 of the property. In October of 1976, this partnership was terminated and Cadillac Fairview
7 acquired the balance of the partnership interest in the remaining unsold property at the Site.

8 K. The majority of the Site has since been commercially developed and sold to
9 various entities. In 1981, Cadillac Fairview sold Lots 12 and 13 to WRH Industries, Inc.
10 ("WRH"). In 1983, Cadillac Fairview sold Lot 37 (including Pit 1A) to WRH. WRH has
11 conducted clean-up actions at Pit 1A, including excavation of waste material. G.P. Holdings,
12 Inc., successor in interest to Cadillac Fairview (hereinafter Cadillac Fairview and G.P.
13 Holdings are collectively referred to as G.P.Holdings), retains title to Lot 36.

14 L. In 1985, G.P. Holdings, Dow and Shell entered into a Memorandum of
15 Agreement (MOA) with the State of California. Pursuant to the MOA, contractors for the
16 State of California, Department of Health Services conducted studies to determine the
17 nature and extent of contamination at the waste disposal pit area at the southern end of the
18 Site. This study area consisted of Lot 36, which is approximately 3.7-acres in size
19 (hereinafter the "Del Amo pit site"). The Del Amo pit site is located entirely within the Del
20 Amo Plant Site.

21 M. On March 18, 1988, G.P. Holdings, Dow, and Shell signed an Administrative
22 Order with the State of California (Index # 87/88-041), under which the previous studies
23 would be incorporated into an RI/FS. The Respondents to the State Order completed a
24 Final Remedial Investigation Report and a Draft Feasibility Study Report for the Del Amo
25 pit site. On October 18, 1991, DTSC issued a Notice of Non Compliance to the
26 Respondents to the State Order by which that Order was terminated. Respondents reserved
27 the right to respond to certain matters raised in the Notice of Non Compliance.

1 N. The 1984 and 1985 studies conducted on the Del Amo pit site involved drilling
2 into and adjacent to the waste pits and installing eight groundwater wells into a shallow
3 aquifer beneath the Site. Three of the wells were located within the boundaries of the Plant
4 Site, while the remaining wells were located off the Site. Soil and waste samples were
5 analyzed for metals and organic chemicals.

6 O. The analytical results indicated high concentrations of benzene, ethylbenzene,
7 toluene, styrene, xylene, and polynuclear aromatic (PNA) hydrocarbons in soil and waste.
8 Based on the soil sampling results, the Respondents to the State Order estimated that
9 approximately 20,000 cubic yards of contaminated soil and waste exist within the boundaries
10 of the former waste pits. Samples of groundwater collected from monitoring wells showed
11 high concentrations of benzene, toluene, ethylbenzene, phenols, and PNAs in wells up-
12 gradient and down-gradient from the pits. One monitoring well located down-gradient from
13 the site, contained a significant thickness of floating hydrocarbon product.

14 P. As part of an ongoing site investigation, directed by EPA at the neighboring
15 Montrose Chemical Company Superfund Site to the west, Montrose Chemical Company of
16 California installed additional groundwater monitoring wells on the 300-acre Del Amo Site.
17 One of the wells contained 1.5 feet of floating benzene product. Other wells in the area
18 showed high concentrations of benzene. The styrene plant operated by Dow received
19 benzene through pipelines from an off-site facility located in Dominguez, California owned
20 by Shell Chemical Company.

21 Q. In 1988, EPA's Field Investigation Team (FIT) conducted an Expanded Site
22 Investigation (ESI) for the Plant Site. Based upon previous studies, FIT determined that
23 the groundwater pathway is the most likely pathway to pose a substantial threat to human
24 health and the environment. Therefore, the EPA ESI study focused on obtaining data
25 necessary to evaluate the Site, focusing primarily on the groundwater pathway.

26 R. FIT installed two monitor well clusters near the site. From the data obtained
27 from these wells, EPA has concluded that, within two miles of the site, there is hydraulic
28

continuity between the uppermost, contaminated aquifer beneath the site and the local, deeper aquifer which is a potential source of drinking water.

S. Past studies indicate subsurface migration of waste constituents into the soils beyond the waste pit boundaries and potentially into the shallow groundwater aquifer beneath the Site. Potential pathways for exposure include the release of volatile organic chemicals during soil disturbance, migration of volatile organic vapors through subsurface soils and migration of contaminants from the shallow aquifer into the deeper aquifer.

T. There is also the potential for hazardous substances to migrate and contaminate the deeper drinking water aquifer located directly below the Site.

U. The principal chemical substances of concern include, but are not limited to, benzene, ethylbenzene, toluene, xylene, styrene, and polynuclear aromatic (PNA) hydrocarbons. Many of these compounds are volatile and/or soluble. Contamination has been detected at a depth of at least 65 feet in some areas, and the contaminants are mobile in soil.

V. Groundwater samples indicate benzene concentrations as high as 750,000 (parts per billion) ppb in the shallow aquifer underlying the Site. Soil cores collected on-site indicate benzene concentrations as high as 66,000,000 ppb. EPA has established a Maximum Contaminant Level (MCL) of 5 ppb of benzene in drinking water.

W. Groundwater and soil core samples indicate ethylbenzene concentrations as high as 4,000,000 ppb and 50,000,000 ppb respectively. EPA has established an MCL of 700 ppb for ethylbenzene in drinking water.

X. Groundwater samples indicate toluene concentrations as high as 2,600 ppb in the shallow aquifer underlying the Site. Soil cores indicate toluene concentrations as high as 940 ppm. EPA has established an MCL of 1,000 ppb for toluene in drinking water.

Y. Soil cores collected from the site indicate xylene concentrations as high as 8,500,000 ppb.

1 Z. Groundwater and soil samples indicate the presence of naphthalene, phenan-
2 threne, and acenaphthalene, and methylphenanthrene, which belong to a class of chemical
3 compounds known as polynuclear aromatic hydrocarbons (PNAs).

4 VI. CONCLUSIONS OF LAW

5 A. The Site is a "facility" as defined in Section 101 (9) of CERCLA, 42 U.S.C.
6 § 9601 (9).

7 B. Respondents are "persons" as defined in Section 101 (21) of CERCLA, 42
8 U.S.C. § 9601 (21).

9 C. The chemicals and their constituents at the Site are "hazardous substances" as
10 defined in Section 101 (14) of CERCLA, 42 U.S.C. § 9601 (14).

11 D. The past, present, and potential migration of hazardous substances from the
12 Site constitutes an actual or threatened "release" as defined in Section 101 (22) of CERCLA,
13 42 U.S.C. § 9601 (22).

14 E. Respondents are potentially responsible parties pursuant to Section 107(a) of
15 CERCLA, 42 U.S.C. § 9607(a).

16 VII. DETERMINATIONS

17 A. Hazardous substances have been released into the environment at or from the
18 Site. There is a substantial threat that hazardous substance will be released into the
19 environment at or from the Site.

20 B. The actions required by this Consent Order are necessary to protect the public
21 health, welfare and the environment.

22 VIII. LEAD AGENCY NOTICE

23 As a signatory to this Consent Order, the California Department of Toxic Substances
24 Control is notified and agrees that EPA is the lead agency for coordinating, overseeing, and
25 enforcing the response action required by the Consent Order.

26 IX. WORK TO BE PERFORMED

27 The work to be performed under this Consent Order consists of two distinct projects
28 that are to be performed concurrently. The first project includes the performance of an

1 RI/FS for the Del Amo Plant Site. The second project includes the completion of a
2 Focused Feasibility Study for the Del Amo pit site. The specific tasks and deliverables
3 required for these two projects are described in the attached Statement of Work.

4 All work performed under this Consent Order shall be under the direction and
5 supervision of a qualified professional engineer or a certified geologist with expertise in
6 hazardous substance site investigation. Within 30 days of the effective date of this Consent
7 Order, and before the work outlined below begins, the Respondents shall notify EPA in
8 writing of the names, titles, and qualifications of such engineer or geologist to be used in
9 carrying out such work. The qualifications of the persons undertaking the work for
10 Respondents shall be subject to EPA's review for verification that such persons meet
11 minimum technical background and experience requirements. Such background and
12 experience shall be deemed sufficient if the persons undertaking the work have satisfactorily
13 performed similar work at an NPL Site within the last 12 months. This Consent Order is
14 contingent on Respondents' demonstration to EPA's satisfaction that Respondents are
15 qualified to perform properly and timely the actions set forth in this Consent Order.

16 If EPA disapproves in writing of any person(s)' technical qualifications, Respondents
17 shall notify EPA of the identity and qualifications of the replacement(s) within 30 days of
18 the written notice. EPA will inform Respondents of its approval or disapproval of such
19 replacement within 15 days after receipt of such notice. If EPA subsequently disapproves
20 of the replacement(s), EPA reserves the right to terminate this Consent Order and to
21 conduct a complete RI/FS or Focused Feasibility Study, and to seek reimbursement for
22 costs and penalties from Respondents. During the RI/FS and Focused Feasibility Study,
23 Respondents shall notify EPA in writing of any changes in the designated engineer or
24 geologist used to carry out such work, providing their names, titles, and qualifications. EPA
25 shall have the same right to approve changes to such personnel as it has hereunder
26 regarding the initial notification.

27 Respondents shall conduct activities and submit deliverables as provided by the
28 attached Statement of Work for the development of the RI/FS and the Focused Feasibility

1 Study. All such work shall be conducted in accordance with CERCLA, the NCP, and EPA
2 guidance including, but not limited to, the "Interim Final Guidance for Conducting Remedial
3 Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01),
4 "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05) and
5 guidance referenced therein, and guidance referenced in the Statement of Work, as may be
6 amended or modified by EPA.

7 The activities and deliverables identified in the Statement Of Work shall be
8 submitted to EPA as provided. All work performed under this Consent Order shall be
9 according to the schedule (Attachment B) in the Statement Of Work (Attachment A), and
10 in full accordance with the standards, specifications, and other requirements of the work
11 plan and sampling and analysis plan, as initially approved or modified by EPA, and as may
12 be amended or modified by EPA from time to time. The Statement Of Work and all other
13 attachments to this Order are deemed part of this Consent Order and are binding on all
14 parties. For the purpose of this Consent Order, the periods of time shall be calculated as
15 calendar days, excepting federal holidays. However, when the period of time prescribed or
16 allowed is less than 11 days, intermediate Sundays and legal holidays shall be extended in
17 the computation in accordance with Rule 6 (a) of the Federal Rules of Civil Procedure.

18 EPA reserves the right to comment on, modify and direct changes for all deliverables.
19 In the event that Respondents amend or revise a report, plan or other submittal upon
20 receipt of EPA comments, if EPA subsequently disapproves of the revised submittal, or if
21 subsequent submittals do not fully reflect EPA's directions for changes, EPA retains the
22 right to seek stipulated or statutory penalties; perform its own studies, complete the RI/FS
23 (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement from
24 the Respondents for its costs; and/or seek any other appropriate relief. In the event that
25 EPA fails or refuses to approve a deliverable required by this Consent Order, Respondents
26 reserve the right to submit the modified deliverable under protest, noting, where appropriate
27 the areas of disagreement . EPA or Respondents may begin Dispute Resolution (Section
28

1 XX) procedures, if appropriate, after EPA's disapproval of a revised or amended
2 deliverable.

3 In the event that EPA takes over some of the tasks, but not the preparation of the
4 RI/FS, Respondents shall incorporate and integrate information supplied by EPA into the
5 final RI/FS report, subject to Respondents' reservation of rights.

6 Neither failure of EPA to expressly approve or disapprove of Respondents'
7 submissions within a specified time period(s), nor the absence of comments, shall be
8 construed as approval by EPA. Whether or not EPA gives express approval for Responde-
9 nts' deliverables, Respondents are responsible for preparing a deliverable in compliance with
10 this Consent Order to EPA.

11 Respondents shall, prior to any off-site shipment of hazardous substances from the
12 site to an out-of-state waste management facility, provide written notification to the
13 appropriate state environmental official in the receiving state and to EPA's Designated
14 Project Coordinator of such shipment of hazardous substances.

15 (a) The notification shall be in writing, and shall include the following
16 information, where available: (1) the name and location of the facility to which the
17 hazardous substances are to be shipped; (2) the type and quantity of the hazardous
18 substances to be shipped; (3) the expected schedule for the shipment of the hazardous
19 substances; and (4) the method of transportation. Respondent(s) shall notify the receiving
20 state of major changes in the shipment plan, such as a decision to ship the hazardous
21 substances to another facility within the same state, or to a facility in another state.

22 (b) Respondent(s) shall provide all relevant information, including information
23 under the categories noted in paragraph 31(a) above, on the off-site shipments, as soon as
24 practical after the award of the contract and before the hazardous substances are actually
25 shipped.

26 X. EPA'S BASELINE RISK ASSESSMENT

27 EPA will perform the baseline risk assessment. Respondents shall support EPA in
28 the effort by providing various information to EPA as outlined above. The major

1 components of the Baseline Risk Assessment include contaminant identification, exposure
2 assessment, toxicity assessment, and human health and ecological risk characterization.

3 EPA will provide, after review of the Respondents' site characterization summary,
4 sufficient information concerning the baseline risks such that the Respondents can begin
5 drafting the Feasibility Study report. This information will generally be in the form of two
6 or more baseline risk assessment memoranda prepared by EPA. One memorandum will
7 generally include a list of the chemicals of concern for human health and ecological effects
8 and the corresponding toxicity values. Another should list the current and potential future
9 exposure scenarios, exposure assumptions, and exposure point concentrations that EPA plans
10 to use in the baseline risk assessment. The EPA agrees to provide Respondents with copies
11 of these memoranda and agrees further that the Respondents may submit comments
12 regarding these memoranda within thirty (30) days following Respondents' receipt of such
13 documents. EPA will also provide Respondents with a copy of the Human Health and
14 Ecological Risk Assessment. The public, including the Respondents, may also comment
15 on this memoranda. However, the Agency is obligated to respond only to significant
16 comments that are submitted during the formal public comment period.

17 After considering any significant comments received, EPA will prepare a baseline risk
18 assessment report based on the data collected by the respondents during the site
19 characterization. EPA will release this report to the public at the same time it releases the
20 final RI report. Both reports will be put into the administrative record for the site.

21 EPA will respond to all significant comments on the memoranda or the baseline risk
22 assessment that are resubmitted during the formal comment period in the Responsiveness
23 Summary of the Record of Decision.

24 This Section is not subject to Dispute Resolution (Section XX).

25 XI. MODIFICATION OF THE STATEMENT OF WORK

26 If at any time during the RI/FS and Focused FS process, Respondents identify a
27 need for additional data to complete the objectives of the RI/FS or Focused FS process, a
28 memorandum documenting the need for additional data shall be submitted to the EPA

1 Project Coordinator within 20 days of identification. EPA in its discretion will determine
2 whether the additional data will be collected by Respondents and whether it will be
3 incorporated into reports and deliverables. Respondents shall have the right to gather any
4 additional data not specified or required under this Consent Order, except as limited by
5 Section 122(e)(6) of CERCLA. Interpretations regarding the meaning of Section 122(e)(6)
6 of CERCLA shall not be subject to dispute resolution.

7 Respondents may request an extension of time to complete any deliverable by filing
8 with EPA a written request for an extension of time. Any request for an extension provided
9 for in this paragraph shall be submitted to EPA within two (2) working days of the event
10 which may justify a need for an extension of time. A request for an extension of time shall
11 be in writing and indicate the new date on which Respondents will submit the deliverable
12 to the EPA. A request for an extension must be a force majeure event as defined in this
13 Consent Order. EPA's approval or disapproval of a request for an extension of time is
14 subject to the Dispute Resolution provision if requested by either party.

15 In the event of conditions posing an immediate threat to human health or welfare
16 or the environment, Respondents shall notify EPA immediately upon discovery. In the
17 event of unanticipated circumstances at the site, Respondents shall notify the EPA Project
18 Coordinator by telephone within 48 hours of discovery of the unanticipated circumstances.
19 In addition to the authorities in the NCP, in the event that EPA determines that the
20 immediate threat or unanticipated circumstances warrant changes in the work plan, EPA
21 shall modify or amend the work plan in writing accordingly. Respondent(s) shall perform
22 the work plan as modified or amended.

23 EPA may determine that in addition to tasks defined in the initially approved work
24 plan, other additional work may be necessary to accomplish the objectives of the RI/FS and
25 Focused FS as set forth in the Statement of Work. Respondents agree to perform these
26 tasks in addition to those required by the initially approved work plans (identified in the
27 Statment Of Work), including any approved modifications, if EPA determines that such
28 actions are necessary for a complete RI/FS. The additional work shall be completed

1 according to the standards, specifications, and schedule set forth or approved by EPA in a
2 written modification to the work plans or written work plan supplements.

3 EPA reserves the right to conduct the work itself at any point, to seek reimbursement
4 from Respondents, and/or to seek any other appropriate relief. Respondents reserve all
5 rights including the right to seek dispute resolution on the need for and scope of any
6 additional tasks; or seek any other appropriate relief as provided or reserved u nder this
7 Consent Order.

8 XII. QUALITY ASSURANCE

9 Respondents shall assure that work performed, samples taken and analyses conducted
10 conform to the requirements of the Statement of Work, the Quality Assurance Project Plan
11 (QAPP) and guidance identified therein. Respondents will assure that field personnel used
12 by Respondents are properly trained in the use of field equipment and in chain of custody
13 procedures.

14 XIII. FINAL RI/FS, FOCUSED FS, PROPOSED PLAN, PUBLIC 15 COMMENT, RECORD OF DECISION, ADMINISTRATIVE RECORD

16 EPA retains the responsibility for the release to the public of the RI/FS report and
17 Focused FS report. EPA retains responsibility for the preparation and release to the public
18 of the proposed plan and record of decision in accordance with CERCLA and the NCP.

19 Pursuant to Section 113(k) of CERCLA, EPA will establish the contents of the
20 administrative record file for selection of the remedial action. Respondents must submit to
21 EPA documents developed during the course of the RI/FS upon which selection of the
22 response action may be based. Respondents shall provide copies of plans, task memoranda
23 including documentation of field modifications, recommendations for further action, quality
24 assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and
25 other relevant documents. Respondents must additionally submit any previous studies
26 conducted under state, local or other federal authorities relating to selection of the response
27 action, and all communications between Respondents and state, local or other federal
28 authorities concerning selection of the response action. At EPA's discretion, Respondents

1 shall establish a community information repository at or near the Site, to house one copy
2 of the administrative record.

4 XIV. PROGRESS REPORTS AND MEETINGS

5 Respondents or their designated representatives will participate in meetings at the
6 request of EPA during the initiation, conduct, and completion of the RI/FS and Focused
7 FS. In addition to discussion of the technical aspects of the RI/FS, topics will include
8 anticipated problems or new issues. Meetings will be scheduled at EPA's discretion, with
9 reasonable notice to DTSC and Respondents. Meetings may be held via tele-conference
10 as appropriate.

11 In addition to the deliverables set forth in this Consent Order, Respondents shall
12 provide to EPA quarterly progress reports by the 10th day of the first month of the calander
13 quarter.

XV. SITE ACCESS

14 A. To the extent that, as of the date of the effective date of this Consent Order,
15 Respondents require access to land other than land they own, Respondents shall use their
16 best efforts to obtain access agreements from the present owners or lessees within 90-days
17 of the effective date of this Consent Order. If the need for access should arise after the
18 effective date of this Consent Order, the Respondents shall use their best efforts to obtain
19 access within 90-days of the need for access arising. Such agreements shall provide
20 reasonable access for EPA, its contractors and oversight officials, the state and its
21 contractors, and Respondents or their authorized representatives. In the event that
22 Respondents are not able to obtain site access to property owned or controlled by persons
23 or entities other than Respondents, Respondents shall notify EPA promptly regarding both
24 the lack of, and efforts made to obtain, such access.

25 Provided Respondents demonstrate that they used their best efforts to attempt to
26 negotiate access agreements, EPA will make reasonable efforts to obtain access to the Site
27 or off-site property or properties. Best efforts by Respondents shall include payment of
28 reasonable consideration. EPA may obtain access for the Respondents, perform those tasks

1 or activities with EPA contractors, or terminate the Consent Order in the event that
2 Respondents cannot obtain access agreements.

3 In the event that EPA performs those tasks or activities with EPA contractors and
4 does not terminate the Consent Order, Respondents shall perform all other activities not
5 requiring access to that site, and shall reimburse EPA for all costs not inconsistent with the
6 NCP incurred in performing such activities. Respondents additionally shall integrate the
7 results of any such tasks undertaken by EPA into its reports and deliverables. Furthermore,
8 the Respondents agree to indemnify the U.S. Government as specified under this Consent
9 Order. Respondents also shall reimburse EPA for all costs and attorney fees incurred by
10 the United States not inconsistent with the NCP to obtain access for the Respondents.

11 B. Respondents agree that no conveyance of title, easement, or other interest in
12 the property comprising the Site shall be consummated without a provision permitting the
13 continuous implementation of the provisions of this Consent Order.

14 C. Respondents shall permit EPA, or its authorized representatives, to have
15 reasonable access at all times to the Site to monitor any activity conducted pursuant to the
16 Statement of Work or conduct such tests or investigations as EPA deems necessary.
17 Nothing in this Consent Order shall be deemed a limit upon EPA's authority under
18 CERCLA or other applicable federal law to gain access to the Site. EPA will endeavor to
19 provide reasonable prior notice for all routine site inspections. Respondents may
20 accompany any EPA employee or representative at the Site during routine inspections.

21 **XVI. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY**

22 A. Respondents shall provide EPA with all results of sampling, testing, modeling,
23 or other data generated by Respondents, or on Respondents behalf, in implementing this
24 Consent Order, and all other analytical data regarding hazardous substance contamination
25 at, or released from, the Plant RI/FS study area, as provided for in or pursuant to § 104(e)
26 of CERCLA, 42 U.S.C. § 9604(e), including:

27 1. The results and Quality Assurance/Quality Control (QA/QC) documentation
28 of all sampling and/or tests or other technical data generated by Respondents or on

1 Respondents' behalf with regard to soil, groundwater, surface water, or air contamination
2 by hazardous substances, pollutants, or contamination at the RI/FS Study area.

3 2. Previous studies or reports in the Respondents' possession;

4 3. Communications between Respondents and local, state or other federal
5 authorities;

6 4. Permits from local, state or federal authorities regarding hazardous substance
7 use or contamination at the RI/FS Study Area.

8 B. At the request of EPA, Respondents shall provide split or duplicate samples
9 to EPA and/or its authorized representatives of any samples collected by Respondents as
10 part of the RI/FS Work Plan. Respondents shall notify EPA of any planned sample collec-
11 tion activity in the preceding quarterly report. EPA will make available to the Respondents
12 validated data generated, or collected, by EPA unless it is exempt from disclosure by any
13 federal or state law or regulation.

14 C. Respondents shall use quality assurance, quality control, and chain of custody
15 procedures described in the "EPA NEIC Policies and Procedures Manual," May 1978,
16 revised November 1984, EPA-330/9-7B-001-R and "Interim Guidelines and Specifications
17 for Preparing Quality Assurance Project Plans," December 1980, QAMS-005/80, and
18 company EPA updates or revisions to these guidelines, while conducting all sample
19 collection and analysis activities required by the Consent Order. Respondents shall consult
20 with EPA in planning for, and prior to, all sampling and analysis as detailed in the RI/FS
21 Statement of Work. To provide quality assurance and maintain quality control, Respondents
22 shall:

23 1. Use a laboratory which has a documented Quality Assurance Program that
24 complies with EPA guidance document QAMS-005/80.

25 2. Ensure that EPA personnel and/or EPA authorized representatives are
26 allowed access to the laboratory and personnel utilized by Respondents for analysis.

1 3. Ensure that the laboratory used by Respondents for analyses uses methods
2 deemed satisfactory to EPA and submits all protocols to be used for analyses to EPA at
3 least 10 days before beginning analyses.

4 D. Respondents shall permit EPA and its authorized representative to have
5 reasonable access at all times to the Site to monitor any activity conducted pursuant to the
6 Statement of Work or conduct such tests or investigations as EPA deems necessary.

7 E. Respondents shall permit EPA and/or its authorized representative to inspect
8 and copy all records, documents, and other writings, including all sampling and monitoring
9 data, that in any way concern soil, groundwater, surface water or air contamination at the
10 Site. Nothing in this Consent Order shall be interpreted as limiting EPA's inspection
11 authority under federal law.

12 F. Respondents may assert a confidentiality claim, covering part or all of the
13 information requested by this Consent Order pursuant to 40 CFR 2.203(b). Analytical data
14 and data covered by Section 104(e)(7)(F) of CERCLA (42 U.S.C. § 9604(e)(7)(F)) shall not
15 be claimed as confidential by Respondents and shall be provided to EPA by Respondents.
16 Information determined to be confidential by EPA will be afforded the protection specified
17 in 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is
18 submitted to EPA, it may be made available to the public by EPA without further notice
19 to Respondents.

20 G. All data, factual information, and documents submitted by Respondents to
21 EPA pursuant to this Consent Order shall be subject to public inspection.

22 H. Nothing herein shall be interpreted as limiting or affecting the Respondent's
23 right to preserve the confidentiality of attorney work product or attorney/client communica-
24 tion.

25 26 XVII. DESIGNATED PROJECT COORDINATORS

27 Documents including reports, approvals, disapprovals, and other correspondence
28 which must be submitted under this Consent Order, shall be sent by certified mail, return

1 receipt requested, to the following addressees or to any other addressees which the
2 Respondents, EPA and DTSC designate in writing:

3 (a) Documents to be submitted to EPA should be sent to [2 copies or more if
4 requested]:

5 Tom Dunkelman, EPA Project Coordinator, (H-7-1)
6 U.S. EPA, Region 9
7 75 Hawthorne St.
8 San Francisco, CA 94105

9 One copy of all documents submitted to EPA should also be sent to:

10 Alice Gimeno, Project Coordinator
11 California Department of Toxic Substances Control
12 245 West Broadway, Suite 350
13 Long Beach, CA 90802

14 (b) One copy of each document to be submitted to the Respondents should be
15 sent to each of the following:

16 W.J. Duchie
17 Shell Oil Company
18 511 N. Brookhurst St.
19 Anaheim, CA 92803

20 Bill Witt
21 CERCLA Operations
22 Dow Chemical Company
23 2030 Willard H. Dow Center
24 Midland, MI 48674

25 John Dudley
26 Dames & Moore
27 175 Cremona Drive, Suite A
28 Goleta, CA 93117

Mr. Dunkelman shall be the designated EPA Project Coordinator, while Mr. W.J. Duchie shall be the designated Project Coordinator for the Respondents. Mr. Dunkelman's phone number is (415) 744-2395, and Mr. W.J. Duchie's phone number is (714) 520-3462. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondents and EPA shall be directed to the Project Coordinator by mail, with copies to such other persons as EPA, the State, and Respondents may respectively designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspon-

1 dence submitted under this Consent Order. EPA, DTSC, and the Respondents each have
2 the right to change their respective Project Coordinator. The other parties must be notified
3 in writing at least 10 days prior to the change.

4 EPA's Project Coordinator shall have the authority lawfully vested in a Remedial
5 Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's
6 Project Coordinator shall have the authority consistent with the National Contingency Plan,
7 to halt any work required by this Consent Order, and to take any necessary response action
8 when he or she determines that conditions at the site may present an immediate
9 endangerment to public health or welfare or the environment. The absence of the EPA
10 Project Coordinator from the area under study pursuant to this Consent Order shall not be
11 cause for the stoppage or delay of work.

12 EPA shall arrange for a qualified person to assist in its oversight and review of the
13 conduct of the RI/FS and Focused FS, as required by Section 104(a) of CERCLA, 42 U.S.C.
14 §9604(a). The oversight assistant may observe work and make inquiries in the absence of
15 EPA, but is not authorized to modify the work plan.

16 XVIII. OTHER APPLICABLE LAWS

17 Respondents shall undertake all actions required by this Consent Order in
18 accordance with the requirements of all applicable local, state, and federal laws and
19 regulations unless an exemption from such requirements is specifically provided in this
20 Consent Order.

21 XIX. RECORD PRESERVATION

22 All records and documents in EPA's and Respondent's possession generated in
23 performance of this Consent Order shall be preserved during the conduct of this Consent
24 Order and for a minimum of 6 years after commencement of construction of any remedial
25 action. The Respondents shall acquire and retain one copy of all documents generated in
26 performance of this Consent Order and which are in the possession of its employees, agents,
27 accountants, contractors, or attorneys. After this 6 year period, the Respondents shall notify
28 EPA at least 90 days before the documents are scheduled to be destroyed. If EPA requests

1 that the documents be saved, the Respondents shall, at no cost to EPA, provide EPA with
2 documents or copies of the documents. Respondents may assert a confidentiality claim,
3 covering part or all of the documents requested by EPA pursuant to 40 C.F.R. §2.203(b)

4 Nothing herein shall be interpreted as limiting or effecting Respondents' right to
5 preserve the confidentiality of attorney work product or attorney client communication.

6 XX. DISPUTE RESOLUTION

7 Unless otherwise prohibited, any disputes concerning activities or deliverables
8 required under this Consent Order shall be resolved as follows: Any party may invoke this
9 Dispute Resolution. All Parties to this Consent Order shall make reasonable efforts to
10 informally resolve disputes at the Project Coordinator level. If resolution cannot be
11 achieved informally, the procedures of this section shall be implemented to resolve the
12 dispute.

13 A. Any Project Coordinator who determines that a dispute cannot be
14 resolved informally shall provide a written notice to the other Project
15 Coordinator(s) which sets forth:

- 16 1) his/her understanding as to the nature of the dispute;
- 17 2) his/her understanding as to the position of the other Project
18 Coordinator(s) with regard to the dispute;
- 19 3) his/her position with regard to the dispute;
- 20 4) the basis for concluding that his/her position on the dispute should
21 be followed rather than the positions of the other Project Coordinator(s).

22 B. Within 7 days of receipt of any notice of dispute, the other Project
23 Coordinator(s) shall advise each other in writing as to whether they agree or
24 disagree with the specific statements provided in the notice to them pursuant
25 to this section. Any Project Coordinator who disputes a specific statement
26 shall clearly set forth:

- 27 1) the basis for disputing such statement;
- 28 2) his/her position with regard to the disputed statement;

1 3) the basis for concluding that his/her position on the dispute should
2 be followed rather than the position of the other Project Coordinator(s).

3 C. If, within 7 days from the date of the submission of the reply/replies to
4 the notice of dispute, the parties have not reconciled all issues raised in such
5 notice, EPA shall present a written notice to the Del Amo Technical Work
6 Group (TWG) setting forth all differences of opinion regarding the remaining
7 issues of disagreement.

8 D. The Del Amo TWG will serve as a forum for resolution of dispute(s) for
9 which agreement has not been reached through the dispute resolution process
10 as set forth in Subsection A, B and C. The Parties shall each designate one
11 individual, other than a Project Coordinator, to serve on the TWG. The
12 purpose of the TWG is to foster discussions on matters that may arise during
13 the conduct of the Work and resolve differences of opinion between the
14 parties to this Consent Order. Following elevation of a dispute to the TWG,
15 the TWG shall have 10 days to unanimously resolve the dispute and issue a
16 written decision which will be final and binding on all Parties.

17 E. If the TWG is unable to unanimously resolve the dispute within this 10
18 day period, a written statement of dispute shall be prepared by the TWG
19 which reflects all sides to the dispute. This written statement shall be forwar-
20 ded to the Deputy Director for Superfund Programs for resolution within 7
21 days after the close of the 10 day TWG resolution period. The Deputy
22 Director for Superfund Programs shall issue a written statement of his/her
23 decision to Respondents.

24 F. Respondents shall then implement EPA's decision. The pendency of any
25 dispute under this Section shall not affect any Party's responsibility for timely
26 performance of the work required by this Consent Order. Use of the dispute
27 resolution provision will not relieve Respondents' duty to complete unrelated
28

1 tasks in a timely manner in accordance with the applicable timetable, deadline
2 or schedule.

3 G. Resolution of a dispute pursuant to this Section of the Consent Order
4 constitutes a final resolution of any dispute arising under this Consent Order.
5 All Parties shall abide by all terms and conditions of any final resolution of
6 dispute obtained pursuant to this Section of this Consent Order. Parties shall
7 implement the final decision accordingly. This dispute resolution provision
8 or EPA's decision pursuant to this provision does not grant or imply
9 jurisdiction to any court to review EPA's decisions pursuant to this Consent
10 Order. All written notices and decisions generated pursuant to this Section
11 of the Consent Order shall be part of the Administrative Record.

12 H. The invocation of dispute resolution does not stay stipulated penalties
13 under this Consent Order.

14 XXI. STIPULATED PENALTIES

15 A. Except with respect to any extensions allowed by EPA in writing, or excused
16 by the provisions of the Force Majeure Section of this Consent Order, Respondents shall
17 be liable for stipulated penalties in accordance with Section XXI for each day that the
18 Respondents fail to comply with the requirements of paragraphs C, D, and E of this Section.

19 B. Penalties shall accrue commencing upon the earliest of the following
20 occurrences: Respondents' receipt of the written determination of disapproval, as specified
21 in the Work To Be Performed Section of this Consent Order; the failure of Respondents
22 to meet the schedule specified or modified by EPA in the SOW; unauthorized activity at the
23 Site; failure to achieve any other requirement under this Consent Order; or Respondents'
24 receipt of written notice from EPA that a violation of this Consent Order has occurred. The
25 dollar amount specified for penalties are not subject to Dispute Resolution (Section XX).
26 In the event Respondents invoke Dispute Resolution, Dispute Resolution shall not stay the
27 accrual of these stipulated penalties. Penalties shall accrue from the date on which a
28 violation of this Consent Order occurs and shall continue to accrue through the final day

1 of the noncompliance. Stipulated penalties shall be assessed in accordance with the
2 schedules set forth below.

3 C. For purposes of this Consent Order only, Class I Noncompliance with the terms
4 of this Consent Order shall be defined as the failure to submit to EPA Quarterly Progress
5 Reports on-time or otherwise in compliance with the terms of the Consent Order.

6 D. For purposes of this Consent Order only, Class II Noncompliance, Class III
7 Noncompliance, and Class IV Noncompliance with the terms of this Consent Order shall
8 be defined as the failure to submit to EPA, on-time or otherwise in compliance with the
9 terms of the Consent Order, those deliverables identified as Class II, Class III, and Class IV
10 deliverables in the schedule (Attachment B) attached to the Statement of Work (Attachment
11 A).

12 E. For purposes of this Consent Order, Class III noncompliance with the terms
13 of this Consent Order shall also be defined as the failure to perform work agreed to in the
14 RI/FS Statement Of Work, or additional work required pursuant to Section XI (Modifica-
15 tion Of Statement of Work);

16 Amount of Stipulated Penalties by Class

17 F. Stipulated penalties shall be calculated according to the schedules below:

18 Class I Noncompliance Penalty Schedule

Period of Failure to Comply	Penalty per day per event
1st day and beyond	\$1,000

22 Class II Noncompliance Penalty Schedule

Period of Failure to Comply	Penalty per day per event
1st through 7th day	\$1,000
8th day and beyond	\$2,500

Class III Noncompliance Penalty Schedule

Period of Failure to Comply	Penalty per day per event
1st through 7th day	\$2,500
8th day and beyond	\$5,000

Class IV Noncompliance Penalty Schedule

Period of Failure to Comply	Penalty per day per event
1st through 7th day	\$5,000
8th day and beyond	\$10,000

G. Respondents' payment of stipulated penalties shall be due within 20 days following demand by the Director, Hazardous Waste Management Division, U.S. EPA, Region 9, by certified check made payable to the United States Treasury and addressed to:

U.S. EPA
Region 9, Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

Respondents shall send a cover letter with any check and the letter shall identify the Site by name and make reference to this Consent Order. Respondent shall send simultaneously to the EPA Project Coordinator a notification of any penalty paid, including a photocopy of the check.

H. The stipulated penalties provisions do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of Respondents' failure to comply with this Consent Order. EPA will not seek statutory penalties until it notifies Respondents of its decision to pursue statutory penalties or other remedies or sanctions.

I. Respondents are jointly and severally liable for the payment of stipulated penalties accruing under this Consent Order.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

3
4
5
6
7
8
9
10
11
12
13
14
15
16

27
28
29
30
31
32
33
34

25
26
27
28

1 and any aspects of the event which may cause or contribute to an endangerment to public
2 health, welfare, or the environment.

3 C. Failure of Respondents to comply with the force major notice requirements
4 will be deemed an automatic forfeiture of their right to request a delay.

5 D. If EPA and Respondents cannot agree that any delay in compliance with the
6 requirements of this Consent Order has been or will be caused by the circumstances beyond
7 the control of Respondents, their contractors, and agents, or on the duration of any delay
8 necessitated by a force majeure event, the dispute shall be resolved according to the dispute
9 resolution provisions of this Consent Order. Respondents shall have the burden of proving
10 that the delay was caused by circumstances beyond the control of Respondents, their
11 contractors, and agents; that reasonable measures were taken to avoid or minimize delay;
12 and the necessity of the duration of the delay.

13 XXIII. REIMBURSEMENT OF PAST COSTS

14 A. United States' Past Response Costs

15 Within 45 days of the effective date of this Consent Order, Respondents shall remit
16 a certified or cashiers check to EPA in the amount of \$450,000 together with interest that
17 has accrued thereon at the rate of interest specified for the Hazardous Substances
18 Superfund under CERCLA Section 107(a), 42 U.S.C. §9607(a), for reimbursement toward
19 past response costs incurred by EPA in responding to the conditions at the Del Amo Plant
20 Site. Because of certain limitations in EPA's cost documentation system, all of EPA's past
21 costs may not be represented in the above dollar figure. EPA reserves the right to provide
22 documentation for, and request payment of, such costs at a later date. Costs incurred after
23 October 31, 1991 will be included under this Consent Order as future response costs.

1 Checks should be made payable to the Hazardous Substances Superfund and should
2 include the name of the site, the site identification number, and the title of this Consent
3 Order. Checks should be forwarded to:

4 U.S. Environmental Protection Agency
5 Region 9, Attn: Superfund Accounting
6 P.O. Box 360863M
Pittsburgh, PA 15251

7 A copy of the transmittal letter and a copy of the check shall be sent simultaneously
8 to the EPA Project Coordinator.

9 EPA will provide Respondents with a copy of the EPA Cost Documentation
10 Management System (CDMS) documentation (or its equivalent) that provides an accounting
11 of its costs expended for the Site up to and including October 31, 1991 and will include
12 indirect and interest cost calculations for this period. The Respondents reserve the right to
13 pay EPA's past costs subject to a review of EPA's cost documentation and resort to dispute
14 resolution to resolve disputed costs if any.

15 B. State Past Response Costs

16 Within 45 days of the effective date of this Consent Order, Respondents shall remit
17 a certified or cashier's check to DTSC in the amount of \$445,051.00 for past response costs
18 and interest that have been incurred by DTSC and the California Hazardous Substances
19 Account in overseeing Respondents' work and in responding to conditions at the Del Amo
20 Plant site. Notwithstanding the provisions of Section XXV, this amount includes the sum
21 total of the obligations of the Respondents for past costs incurred by DTSC with respect to
22 the Site through December 31, 1991. Costs incurred after that date will be included under
23 this Consent Order as future response costs.

24 DTSC reserves the right to seek recovery of the remaining unpaid portion of its past
25 response costs and interest from potentially responsible parties other than the Respondents.

26 Checks should be made payable to the State Department of Toxic Substances
27 Control, and should include the name of the site, the site identification number, the
28

1 operable unit, if any, and the title of this Consent Order. Respondents shall forward the
2 checks to:

3 California Department of Toxics Substances Control
4 Attn: Accounting/Cost Recovery - Jeanne Derdowski
5 P.O. Box 806
6 Sacramento, CA 95812-0806

7 A copy of the transmittal letter and a copy of the check shall be sent simultaneously
8 to the DTSC Project Coordinator and to Dennis A. Ragen, Deputy Attorney General, 110
9 West A Street, Suite 700, San Diego, CA 92101. The Respondents reserve the right to pay
10 the portion of DTSC's past costs incurred during the period from September 30, 1991
11 through December 31, 1991 subject to a later review of DTSC's cost documentation for such
12 period, and to resort to dispute resolution to resolve any disputes involving such portion of
13 DTSC's costs.

14 XXIV. REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS

15 A. United States' Response And Oversight Costs

16 Following the issuance of this Consent Order, EPA shall submit to the Respondents,
17 no more than annually, an accounting of all response costs including oversight costs incurred
18 by the U.S. Government with respect to this Site after October 31, 1991. Response costs
19 may include, but are not limited to, costs incurred by the U.S. Government not inconsistent
20 with the NCP in overseeing Respondents' implementation of the requirements of this
21 Consent Order and activities performed by the government as part of the RI/FS and
22 community relations, including any costs incurred while obtaining access.

23 Costs shall include all direct and indirect costs, including, but not limited to, time and
24 travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative
25 agreement costs, compliance monitoring; including the collection and analysis of split
26 samples, inspection of RI/FS activities, site visits, discussions regarding disputes that may
27 arise as a result of this Consent Order, review and approval or disposal of reports, costs of
28 performing the baseline risk assessment, and costs of redoing any of Respondents' tasks as
permitted pursuant to Section 107(a)(4)(a) of CERCLA. The EPA Cost Documentation

1 Management System (CDMS) documentation or its equivalent, shall serve as basis for
2 payment demands.

3 Respondents shall, within 45 days of receipt of each accounting submitted by the
4 EPA no more frequently than annually, remit a certified or cashier's check for the amount
5 of those costs. Interest shall accrue from the date payment of a specified amount is
6 demanded in writing; or the date of the expenditure which ever is later, pursuant to
7 CERCLA §107(a)(4). The interest rate is the rate of interest on investments for the
8 Hazardous Substances Superfund as specified in Section 107(a) of CERCLA, 42 U.S.C.
9 §9607(a).

10 Checks should be made payable to the Hazardous Substances Superfund and should
11 include the name of the site, the site identification number, the account number and the
12 title of this Consent Order. Checks should be forwarded to:

13 U.S. Environmental Protection Agency
14 Region 9, Attn: Superfund Accounting
P.O. Box 360863M
15 Pittsburgh, PA 15251

16 Copies of the transmittal letter and a copy of the check should be sent simultaneously
17 to the EPA Project Coordinator.

18 Respondents agree to limit any disputes concerning costs to accounting errors and
19 the appropriateness of the expenditures pursuant to the NCP. Respondents shall identify
20 any contested costs and the basis of their objection. All undisputed costs shall be remitted
21 by Respondents in accordance with the schedule set forth above. Disputed costs shall be
22 paid by Respondents into an escrow account while the dispute is pending. Respondents
23 bear the burden of establishing the inappropriateness of any expenditure, an EPA
24 accounting error, or the inclusion of costs outside the scope of this Consent Order. The
25 Respondents reserve the right to pay EPA's costs subject to a review of EPA's cost
26 documentation and resort to dispute resolution to resolve disputed costs if any.

27 B. State's Response And Oversight Costs
28

1 Respondents shall reimburse the State of California Hazardous Substance Account
2 for the response and oversight costs incurred by The State of California with respect to this
3 Consent Order provided that such costs are not inconsistent with the NCP.

4 Following the issuance of this Consent Order, the State shall submit to the
5 Respondents no more frequently than annually, an accounting of all response costs including
6 oversight costs incurred by the State of California with respect to this Consent Order. Costs
7 shall include all direct and indirect costs.

8 Respondents shall, within 45 days of receipt of each accounting, remit a certified or
9 cashier's check for the amount of those costs. Interest shall accrue from the date payment
10 of a specified amount is demanded in writing. The interest rate is the rate of interest on
11 investments for the Hazardous Substances Superfund in Section 107(a) of CERCLA, 42
12 U.S.C. §9607(a).

13 Checks should be made payable to the State Department of Toxic Substances
14 Control, and shall reference the "Del Amo Superfund Site," Respondents shall forward the
15 certified or cashiers check(s) to:

16 California Department of Toxic Substances Control
17 Attn: Accounting/Cost Recovery - Jeanne Derdowski
18 P.O. Box 806
Sacramento, CA 95812-0806

19 A copy of the transmittal letter and a copy of the check shall be sent simultaneously
20 to the State Project Coordinator and to Dennis A. Ragen, Deputy Attorney General, 110
21 West A Street, Suite 700, San Diego, CA 92101.

22 Respondents agree to limit any disputes concerning costs to accounting errors and
23 the appropriateness of the expenditures pursuant to the NCP. Respondents shall identify
24 any contested costs and the basis of their objection. All undisputed costs shall be remitted
25 by Respondents in accordance with the schedule set forth above. Disputed costs shall be
26 paid by Respondents into an escrow account while the dispute is pending. Respondents
27 bear the burden of establishing the inappropriateness of any expenditures, a State
28 accounting error or the inclusion of costs outside the scope of this Consent Order. The

1 Respondents reserve the right to pay DTSC's costs subject to a review of DTSC's cost
2 documentation and resort to dispute resolution to resolve disputed costs if any.

3 **XXV. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS**

4 EPA reserves the right to bring an action against the Respondents under Section
5 107(a) of CERCLA, 42 U.S.C. §9607(a), for recovery of all response costs including
6 oversight costs, incurred by the United States at the Site that are not reimbursed by the
7 Respondents; any costs incurred in the event that EPA performs the RI/FS or any part
8 thereof, and any future costs incurred by the United States in connection with response
9 activities conducted under CERCLA at this site.

10 EPA reserves the right to bring an action against Respondents to enforce the past
11 costs and response and oversight cost reimbursement requirements of this Consent Order,
12 to collect stipulated penalties assessed pursuant to Section XXI of this Consent Order, and
13 to seek penalties pursuant to Section 109 of CERCLA, 42 U.S.C. §9609, excluding those
14 violations for which the EPA has received stipulated penalties.

15 DTSC reserves the right to bring an action against Respondents for the recovery of
16 any future response costs, including oversight costs, incurred by DTSC with respect to the
17 Del Amo Plant Site which are not reimbursed by Respondents. DTSC reserves the right
18 to bring an action against Respondents to enforce the past costs and response and oversight
19 cost reimbursement requirements of this Consent Order.

20 Except as expressly provided in this Consent Order, each party reserves all rights and
21 defenses it may have. EPA reserves the right to take any enforcement action pursuant to
22 CERCLA and/or any other legal authority, including the right to seek injunctive relief,
23 monetary penalties, and punitive damages for any violation of law or this Consent Order.
24 Nothing in this Consent Order shall affect EPA's removal authority or EPA's response or
25 enforcement authorities including, but not limited to, the right to seek injunctive relief,
26 stipulated penalties, statutory penalties, and/or punitive damages, excluding those violations
27 for which the EPA has received stipulated penalties.

1 Respondents reserve all rights they may have to oppose and defend against such
2 claims and actions and to assert any and all claims they may have against EPA and/or any
3 person, or government agency. Respondents reserve any rights they may have to bring any
4 action otherwise available against any person as defined in Section 101(21) of CERCLA.
5 The execution and performance of this Consent Order is not an admission by any of the
6 Respondents of any fact, conclusion or liability related to any issue dealt with in the Order.
7 Each Respondent's performance under the Consent Order is undertaken without waiver of
8 or prejudice to (1) Any claims or defenses that may be asserted in the event of future
9 litigation about or related to the site, or (2) Any rights of contribution or indemnity against
10 any person including other Respondents. Nor is the execution of the performance of the
11 Consent Order an agreement by any Respondent to take any action at the site other than
12 described in the Consent Order.

13 Respondents are not released from liability, if any, for any response actions beyond
14 the scope of this Consent Order regarding removals, other operable units, remedial
15 design/remedial action of this operable unit, or activities arising pursuant to Section 121(c)
16 of CERCLA.

17 XXVI. OTHER CLAIMS

18 In entering into this Consent Order, Respondents waive any right to seek
19 reimbursement under Section 106(b) of CERCLA; 42 U.S.C §9606(b). Respondents also
20 waive any right to present any claim under Section 111 or 112 of CERCLA. This Consent
21 Order does not constitute any decision on preauthorization of funds under Section 111(a)(2)
22 of CERCLA.

23 Nothing in this Consent Order shall constitute or be construed as a release from any
24 claim, cause of action or demand in law or equity against any person, firm, partnership,
25 subsidiary or corporation not a signatory to this Consent Order for any liability it may have
26 arising out of or relating in any way to the generation, storage, treatment, handling,
27 transportation, release, or disposal of any hazardous substances, pollutants, or contaminants
28

1 found at, taken to, or taken from the Site. Respondents shall bear their own costs and
2 attorneys' fees.

3 XXVII. INDEMNIFICATION

4 The Respondents agree to indemnify and hold the United States Government, DTSC,
5 and their agencies, departments, agents, and employees harmless from acts or omissions or
6 causes of action arising from or caused by the negligence or wrongful conduct of
7 Respondents, their employees, agents, servants, receivers, successors, or assignees, in
8 carrying out activities under this Consent Order. Neither EPA nor DTSC is a party in any
9 contract involving the Respondents at the Site.

10 XXVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

11 The effective date of this Consent Order shall be the date it is signed by EPA.

12 This Consent Order may be amended by mutual agreement of EPA, DTSC and
13 Respondents. Amendments shall be in writing and shall be effective when signed by EPA.
14 EPA Project Coordinators do not have the authority to sign amendments to the Consent
15 Order.

16 No informal advice, guidance, suggestions, or comments by EPA regarding reports,
17 plans, specifications, schedules, and any other writing submitted by the Respondents will be
18 construed as relieving the Respondents of their obligation to obtain such formal approval
19 as may be required by this Consent Order. Any deliverables, plans, technical memoranda,
20 reports (other than progress reports), specifications, schedules and attachments required by
21 this Consent Order are, upon approval by EPA, incorporated into this Consent Order.

22 XXIX. CONTRIBUTION PROTECTION

23 With regard to claims for contribution against Respondents for matters addressed in
24 this Consent Order, parties hereto agree that the Respondents are entitled to such
25 protection from contribution actions or claims as provided by CERCLA Section 113(f)(2),
26 42 U.S.C. §9613(f)(2). The Respondents, however, expressly disclaim the contribution
27 protection of CERCLA §113(f)(2) as between each of the Respondents, but not as to non-
28 settling parties.

1 XXX. TERMINATION AND SATISFACTION

2 The provisions of the Consent Order shall be deemed satisfied upon Respondents'
3 receipt of written notice from EPA that Respondents have demonstrated, to the satisfaction
4 of EPA, that all of the terms of this Consent Order, including any additional tasks which
5 EPA has determined to be necessary, have been completed. Respondents may petition the
6 EPA in writing for written determination. If the EPA does not respond to Respondents'
7 request within forty-five (45) days after receipt, Respondents may invoke Section XX.

8 XXXI. DISCLAIMER

9 A. By entering into this Consent Order, or by taking any action in accordance
10 with it, the Respondents do not admit any of the findings of fact, conclusions of law,
11 determinations or any of the allegations contained in this Consent Order, nor do
12 Respondents admit liability for any purpose or admit any issues of law or fact or any
13 responsibility for the alleged release or threat of release of any hazardous substance into the
14 environment. The participation of any Respondent in this Consent Order shall not be
15 admissible against Respondents in any judicial or administrative proceeding, except for an
16 action by EPA to enforce the terms of this Consent Order, or, actions to which EPA is a
17 party, which allege injury based, in whole or part, on acts or admissions of Respondents in
18 connection with performance under this Consent Order. However, the terms of this
19 Consent Order and the participation of Respondents shall be admissible in any action
20 brought by any Respondent to enforce any contractual obligation imposed by any agreement
21 among them.

22 B. By signing and consenting to this Consent Order, or by taking any actions
23 pursuant to this Consent Order, Respondents do not concede that the RI/FS, Focused FS,
24 or any other investigation at the Site is necessary to protect the public health or welfare or
25 the environment. Respondents have agreed to this Consent Order to provide assistance to
26 EPA and the California Department of Toxic Substances and to avoid unnecessary conflict
27 or litigation.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

IT IS SO AGREED AND ORDERED:

By: Jeff Zelikson Date: 5-7-92
Jeff Zelikson, Director
Hazardous Waste Management Division
U.S. Environmental Protection Agency, Region 9

By: William F. Soo Hoo, Director Date: _____
California Department of Toxic Substances Control

By: William J. Duchie Date: _____
 Manager-Environmental Remediation
 West Coast, Corporate Environmental Affairs
 Shell Oil Company

22
23
24
25
26
27
28

XXXII COUNTERPARTS

This Consent Order may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

IT IS SO AGREED AND ORDERED:**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

By: _____ Date: _____
Jeff Zelikson, Director
Hazardous Waste Management Division
U.S. Environmental Protection Agency, Region 9

CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: William F. Soo Hoo Date: 5/6/92
William F. Soo Hoo, Director
California Department of Toxic Substances Control

RESPONDENTS

By: _____ Date: _____
William J. Duchie
Manager-Environmental Remediation
West Coast, Corporate Environmental Affairs
Shell Oil Company

By: _____ Date: _____
J.M. Martin
Director of Environmental Affairs
Dow Chemical, USA

1 XXXII COUNTERPARTS

2 This Consent Order may be executed and delivered in any number of counterparts,
3 each of which, when executed and delivered, shall be deemed to be an original, but such
4 counterparts shall together constitute one and the same document.

5 IT IS SO AGREED AND ORDERED:


6 UNITED STATES
7 ENVIRONMENTAL PROTECTION AGENCY

8 By: _____ Date: _____
9 Jeff Zelikson, Director
10 Hazardous Waste Management Division
U.S. Environmental Protection Agency, Region 9

11 CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL

12
13 By: _____ Date: _____
14 William F. Soo Hoo, Director
California Department of Toxic Substances Control

15 RESPONDENTS

16
17 By:  Date: 4/27/92
18 William J. Duchie
19 Manager-Environmental Remediation
West Coast, Corporate Environmental Affairs
Shell Oil Company

20 By: _____ Date: _____
21 J.M. Martin
22 Director of Environmental Affairs
Dow Chemical, USA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

XXXII COUNTERPARTS

This Consent Order may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but ~~such~~ counterparts shall together constitute one and the same document.

IT IS SO AGREED AND ORDERED:

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

By: _____ Date: _____
Jeff Zelikson, Director
Hazardous Waste Management Division
U.S. Environmental Protection Agency, Region 9

CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: _____ Date: _____
William F. Soo Hoo, Director
California Department of Toxic Substances Control

RESPONDENTS

By: _____ Date: _____
William J. Duchie
Manager-Environmental Remediation
West Coast, Corporate Environmental Affairs
Shell Oil Company

By: J.B. Martin Date: May 6, 1992
J.M.S. Martin
Director of Environmental Affairs
Dow Chemical, USA